IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

Supreme Court, U. S.
FILED
JAN 7 1976
MICHAEL RODAK, JR., CLERK

No. 74-1492

WALTER E. WASHINGTON, et al., Petitioners,

v.

ALFRED E. DAVIS, et al., Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

RESPONDENTS' OPPOSITION TO THE MOTION OF THE EDUCATIONAL TESTING SERVICE TO FILE BRIEF AS AMICUS CURIAE

Respondents oppose the motion of the Educational Testing Service ("ETS") to file a brief as amicus curiae, for the following reasons:

1. The motion is filed out of time. The brief lodged with the motion makes contentions that are inconsistent with respondents' position that the decision of the court of appeals was correct and should be affirmed. It is, therefore, in opposition to the position of the respondents. In this circumstance, the ETS motion and brief were due on November 20, 1975, simultaneously with the brief for petitioners. See Rule 42(2), Rules of the Supreme Court of the United States.

2. On November 5, 1975, ETS contacted counsel for respondents to request consent to filing a brief as amicus curiae on December 20, 1975, the due date of respondents' brief. Counsel for respondent informed counsel for ETS that he would not agree to ETS filing an amicus brief on December 20, 1975, because that would deprive respondents of an opportunity to respond. Counsel for respondents did state that he would agree to ETS filing on December 5, 1975, 30 days after the conversation, and 15 days after the date on which it would otherwise be due. Counsel for Educational Testing Service declined this offer of consent, and insisted on filing simultaneously with respondents.

3. Respondents' brief and the Educational Testing Service's motion were both filed on Friday, December 19, 1975. Particularly because the movant had ample opportunity to file its motion and brief well in advance of the due date for respondents' brief, there is no justification for filing at a time which necessarily deprives respondents of the opportunity to respond to the many contentions of the proposed brief that are in opposition to respondents' positions.

4. The Educational Testing Service's interest in this litigation is not materially different from that of amici Division of Industrial Psychology of the American Psychological Association or the American Society for Personnel Administration.

The Motion of the Educational Testing Service to file a brief amicus curiae should be denied.

Respectfully submitted,

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Dated: December 22, 1975